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In re Application of :  
FARMER et al. :  
U.S. Application No. 09/509,159 : DECISION ON PETITION  
PCT No.: PCT/US98/07307 :  
Int. Filing Date: 10 April 1998 :  
Priority Date: 18 April 1997 :  
Attorney Docket No. 19374-501 :  
For: TOPICAL USE OF PROBIOTIC  
BACILLUS SPORES TO PREVENT OR  
CONTROL MICROBIAL INFECTIONS:

This is a decision on applicants' "Petition to Withdraw Holding of Abandonment - Decision on Petition under 37 CFR 1.137(b) and 37 CFR 1.47(a) Not Received" filed 03 May 2002 and 17 July 2002. The papers are being treated as a petition under 37 CFR 1.181 and a renewed petition under 37 CFR 1.47(a).

#### BACKGROUND

On 10 April 1998, applicants filed international application PCT/US98/07307 which claimed a priority date of 18 April 1997 and which designated the United States. A Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 18 October 1999.

On 22 March 2000, applicants filed a transmittal letter requesting entry into the national stage in the United States, which was accompanied, *inter alia*, by the basic national fee; a copy of the international application; a declaration executed by Sean Farmer; a small entity statement; a petition under 37 CFR 1.137(b) and the appropriate petition fee; and a petition under 37 CFR 1.47(a) and the appropriate petition fee.

In a decision dated 30 June 2000, applicants' petition under 37 CFR 1.137(b) was granted and applicants' petition under 37 CFR 1.47(a) was dismissed without prejudice.

On 03 May 2002 and 17 July 2002, applicants filed the present petition.

### DISCUSSION

The above-identified application was abandoned for failure to respond to the Decision mailed 30 June 2000.

A. Petition under 37 CFR 1.181

The Official Gazette, at 1156 OG 53, provides that a petition requesting relief based on the grounds that (1) the Office action was not received; (2) attests that a search of the file jacket indicates the Office action was not received; and (3) attests that a search of counsel's docket records indicates the Office action was not received. The petition must also be accompanied by (4) copies of the docket record where the non-received Office action would have been entered.

Applicants' petition filed 03 May 2002 satisfies all of the items above. Applicants' counsel attests that the Office action was not received and that a search of the file jacket indicated the Office action was not received. Applicants also submit a copy of the docket record for the time period of 30 August 2000, where the non-received office action would have been entered had it been received.

B. Renewed Petition under 37 CFR 1.47(a)

The renewed Petition Under 37 CFR 1.47(a) is moot since the declaration filed 03 May 2002 was executed by the previous non-signing inventor, Robert J. Mikhail. However, the declaration filed 22 March 2000 is not acceptable under 37 CFR 1.497 for the reasons explained below.

The declaration filed on 22 March 2000 is defective pursuant to 37 CFR 1.497(a)(3) which requires that the declaration "identify each inventor and the residence and country of citizenship of each inventor." In this instance, the declaration executed by Sean Farmer does not list Robert J. Mikhail as an inventor. Therefore, a new declaration executed by Sean Farmer, with the second inventor listed thereon, must be filed in order to fulfill the declaration requirement under 35 U.S.C. 371.

### CONCLUSION

For the reasons above, the Petition under 37 CFR 1.181 is GRANTED and the holding of abandonment has been withdrawn.

The Renewed Petition under 37 CFR 1.47(a) is DISMISSED as MOOT.

A proper response must be filed within **TWO (2) MONTH** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a). A proper response must include a proper declaration in compliance with 37 CFR 1.497 (a) and (b) executed by Sean Farmer.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.

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